

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-05-170

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA,

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of The Guardian Life Insurance Company of America (the "Respondent"), pursuant to §§ 10-1-201 to 207, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated November 18, 2004 (the "Report"), relevant examiner work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as an accident and health insurance company.
2. In accordance with §§ 10-1-201 to 207, C.R.S., on November 18, 2004, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2003 to December 31, 2003.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the examiners' handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners handbook. The Commissioner also employed other guidelines and procedures that he deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined, or as ascertained from the testimony of the Respondent's officers or agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, any and all of Respondent's submissions and rebuttals, and all relevant portions of the examiner's work papers.

CONCLUSIONS OF LAW AND ORDER

8. Unless expressly modified in this Final Agency Order (the "Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue E1 concerns the following violation: Failure to submit an Annual Report and Certification of Forms in use or available for use in 2003. The Respondent shall provide evidence that it established procedures to ensure that an Annual Report and Certification of Forms is filed in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue E2 concerns the following violation: Failure to reflect correct benefits for durable medical equipment in the Basic and Standard Health Benefit plans. The Respondent shall provide evidence that it has revised its Basic and Standard Health plans to reflect correct benefits for durable medical equipment to ensure compliance with Colorado insurance law.
11. Issue E3 concerns the following violation: Failure to reflect one of the mandatory fields on the prescription drug card. The Respondent shall provide evidence that it has revised its prescription drug card to reflect all required information to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
12. Issue E4 concerns the following violation: Failure to modify the Basic Health Benefit Plan or offer a rider to exclude certain benefits from July 1, 2003 until January 1, 2004. The Respondent shall provide evidence that it

has modified its Basic Health Benefit plans to exclude specified coverages to ensure compliance with Colorado insurance law.

13. Issue E5 concerns the following violation: Failure to reflect correct coverage to be provided for inpatient well baby care in the Basic and Standard Health Benefit plans. The Respondent shall provide evidence that it has revised its Basic and Standard Health Benefit plans to reflect correct coverage information for inpatient well baby care to ensure compliance with Colorado insurance law.
14. Issue E6 concerns the following violation: Failure to reflect correct benefits for preventive child health supervision services. The Respondent shall provide evidence that it has revised its plans to reflect correct benefits for preventive child health supervision services to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
15. Issue E7 concerns the following violation: Failure to reflect a correct definition of a dependent. The Respondent shall provide evidence that it has revised all applicable forms to reflect definitions of a dependent to ensure compliance with Colorado insurance law.
16. Issue E8 concerns the following violation: Failure to offer the opportunity to purchase benefits for alcohol and substance abuse in the Basic and Standard Health Benefit plans. The Respondent shall provide evidence that it has revised its procedures to ensure that an offer to purchase benefits for alcohol and substance abuse provided to each employer that purchases group coverage is in compliance with Colorado insurance law.
17. Issue E9 concerns the following violation: Failure to reflect correct preventive services in the Basic and Standard Health Benefit plans. The Respondent shall provide evidence that it has revised all applicable forms to correctly reflect covered preventive services in the Basic and Standard Health Benefit plans to ensure compliance with Colorado insurance law.
18. Issue E10 concerns the following violation: Failure to reflect correctly the extent of coverage for home health services and hospice care. The Respondent shall provide evidence that it has revised all applicable policy forms to reflect correctly and completely the extent of coverage provided for home health services and hospice care to ensure compliance with Colorado insurance law.
19. Issue E11 concerns the following violation: Failure to reflect correct coverages for maternity benefits and complications of pregnancy. The Respondent shall provide evidence that it has revised its forms to reflect correct information concerning the coverages for maternity benefits and

complications of pregnancy to ensure compliance with Colorado insurance law.

20. Issue E12 concerns the following violation: Failure to reflect correct coverage provisions for skilled nursing facility care. The Respondent shall provide evidence that it has revised its policy forms to reflect correct coverage provisions for skilled nursing facility care to ensure compliance with Colorado insurance law.
21. Issue E13 concerns the following violation: Failure to reflect the coverage to be provided for inherited enzymatic disorders. The Respondent shall provide evidence that it has revised its forms to reflect the coverage provided for inherited enzymatic disorders to ensure compliance with Colorado insurance law.
22. Issue E14 concerns the following violation: Failure to reflect all or reflect completely some required small group provisions. The Respondent shall provide evidence that it has revised its certificates to reflect all required small group and individual provisions to ensure compliance with Colorado insurance law.
23. Issue E15 concerns the following violation: Failure to reflect a complying provision regarding network adequacy. The Respondent shall provide evidence that it has revised its certificates to reflect required provisions for maintaining network adequacy to ensure compliance with Colorado insurance law.
24. Issue E16 concerns the following violation: Failure to reflect correct coverage for physical, occupational and speech therapy in the Basic and Standard Health Benefit plans. The Respondent shall provide evidence that it has revised its policies to reflect correct coverage for physical, occupational and speech therapy to ensure compliance with Colorado insurance law.
25. Issue E17 concerns the following violation: Failure to provide benefits for covered services based on a licensed provider's status, e.g., a family member or a business or professional associate of the member or their family. The Respondent shall provide evidence that it has revised all applicable forms to reflect that benefits may not be denied solely based on a provider's status; e.g., a family member or a business or professional associate of the member or their family, to ensure compliance with Colorado insurance law.
26. Issue E18 concerns the following violation: Failure to reflect correct provisions for conversion and continuation privileges. The Respondent shall provide evidence that it has revised its certificates to reflect accurate

information concerning conversion and continuation privileges to ensure compliance with Colorado insurance law.

27. Issue E19 concerns the following violation: Failure to prominently display the required small group disclosure statement on small employer applications. The Respondent shall provide evidence that it has revised its applications to prominently display the required small group disclosure statement to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
28. Issue E20 concerns the following violation: Failure to reflect correct group coordination of benefit provisions. The Respondent shall provide evidence that it has revised its certificates to reflect correct group coordination of benefit provisions to ensure compliance with Colorado insurance law.
29. Issue E21 concerns the following violation: Failure to correctly define the requirements to qualify as an eligible employee. The Respondent shall provide evidence that it has revised its certificates to reflect a correct definition of employee eligibility requirements to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
30. Issue E22 concerns the following violation: Failure to provide coverage for spinal manipulation in the Basic and Standard Health Benefit plans. The Respondent shall provide evidence that it has revised the Basic and Standard Health Benefit Plan certificates to reflect that spinal manipulation is covered to ensure compliance with Colorado insurance law.
31. Issue E23 concerns the following violation: Failure to reflect the correct number of days to be allowed for a break in coverage. The Respondent shall provide evidence that it has revised the Refusal of Group Insurance form to reflect the correct number of days allowed for a break in coverage to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
32. Issue E24 concerns the following violation: Failure to reflect the correct maximum combined period of exclusion of coverage and pre-existing conditions for late enrollees. The Respondent shall provide evidence that it has revised its certificates to reflect the correct maximum combined period of exclusion of coverage and pre-existing conditions for late enrollees to ensure compliance with Colorado insurance law.
33. Issue E25 concerns the following violation: Failure to display a fraud warning that is substantially the same as required by law. The Respondent

shall provide evidence to ensure that it has revised its applications to reflect a fraud warning that is substantially the same in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.

34. Issue E26 concerns the following violation: Failure to reflect correct information in a conversion plan application concerning issuance of conversion coverage. The Respondent shall provide evidence that it has revised its applications to reflect correct information concerning issuance of conversion coverage to ensure compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
35. Issue E27 concerns the following violation: Failure to use the exact required format or to correctly represent the benefits, conditions, or terms of coverage in Health Benefit Plan description forms. The Respondent shall provide evidence that it has revised its Health Benefit Plan description forms to reflect the exact format and to correctly represent the benefits, conditions, and terms of the plans to ensure compliance with Colorado insurance law.
36. Issue E28 concerns the following violation: Failure to include all health insurance forms in use on the 2003 annual forms report. The Respondent shall provide evidence that it has established procedures to ensure that all policy forms or other evidence of health care coverage currently in use are included on the list submitted as an annual report of health insurance forms in compliance with Colorado insurance law. The Division's records indicate that Respondent has complied with the corrective actions ordered concerning this violation.
37. Issue E29 concerns the following violation: Certifying and using forms that in some cases do not comply with Colorado insurance law. The Respondent shall provide evidence that it has established procedures to ensure that evidence of coverage forms issued or delivered to Colorado insureds comply with statutory mandates as certified by an officer of the Respondent in compliance with Colorado insurance law.
38. Issue J1 concerns the following violation: Failure in some cases, to pay, deny or settle claims within the time periods required by Colorado insurance law. The Respondent shall provide evidence that all claims are paid, denied or settled within the required time periods to ensure compliance with Colorado insurance law.
39. Issue J2 concerns the following violation: Failure to follow correct procedure for denial of benefits. The Respondent shall provide evidence

that it has established the necessary procedure for denial of benefits to ensure compliance with Colorado insurance law.

40. Issue J3 concerns the following violation: Failure to accurately determine the number of days utilized for claim processing. The Respondent shall provide evidence that it has established the necessary procedures to accurately determine the number of days utilized to process claims to ensure compliance with Colorado insurance law.
41. Issue J4 concerns the following violation: Failure to pay and/or correctly calculate applicable late payment interest/penalty in some cases. The Respondent shall provide evidence that it has established procedures to ensure that late payment on interest and penalties are paid and calculated correctly in all applicable instances to ensure compliance with Colorado insurance law.
42. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of thirty one thousand and no/100 dollars (\$31,000.00). This fine represents a combined fine for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division bulletin no. 1-98, issued on January 1, 1998.
43. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.
44. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self-audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies' presented at the market conduct examination exit meeting. Unless otherwise specified in this Order, all self-audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
45. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the

Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.

46. Copies of the examination report, the Respondent's response, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

WHEREFORE: It is hereby ordered that the findings and conclusions contained in the final examination Report dated November 18, 2004, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 21st day of March, 2005.

A handwritten signature in black ink that reads "Doug Dean". The signature is written in a cursive, flowing style.

Doug Dean
Acting Insurance Commissioner

CERTIFICATE OF CERTIFIED MAILING

I hereby certify that on the 21st day of March, 2005, I deposited the within **FINAL AGENCY ORDER NO. O-05-170 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA**, in the United States mail via certified mail with the proper postage affixed and addressed to:

Mr. Dennis J. Manning, President
The Guardian Life Insurance Company of America
7 Hanover Square
New York, NY 10004-2616

Christopher K. Fedosh, Senior Project Manager
Market Conduct & Compliance
The Guardian Life Insurance Company of America
7 Hanover Square
New York, NY 10004-2616

A handwritten signature in cursive script, reading "Dolores Arrington".

Dolores Arrington, MA, AIRC, ACS
Market Conduct Section
Division of Insurance